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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 STEVE MOSHTAGH, an individual on  
10 behalf of himself and other similarly  
11 situated,

12 Plaintiff,

13 v.

14 THE HOME DEPOT U.S.A., Inc., a

15 Delaware corporation,

16 Defendant.  
17

CASE NO. C19-1205 RSM

**STIPULATED  
PROTECTIVE ORDER**

18 1. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary, or private  
20 information for which special protection may be warranted. Accordingly, the parties hereby  
21 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
22 acknowledge that this Order is consistent with LCR 26(c). It does not confer blanket protection on  
23 all disclosures or responses to discovery, the protection it affords from public disclosure and use  
24 extends only to the limited information or items that are entitled to confidential treatment under  
25 the applicable legal principles, and it does not presumptively entitle parties to file confidential  
26 information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

4 (a) the following information related to Home Depot’s current and former employees: W-  
5 2 and 1099 forms, personnel or employment records, compensation and benefit  
6 information, medical records, and home addresses, dates of birth, email addresses,  
7 telephone numbers, and social security numbers;

8 (b) the following information related to Home Depot’s customers: home addresses, email  
9 addresses, and telephone numbers;

10 (c) the following commercially sensitive or proprietary business information: sales data;  
11 profit and loss summaries; budgets; financial statements; commercial drawings;  
12 marketing plans; product specifications, designs and manufacturing processes; and

13 (d) documents or information of a non-party that the non-party currently maintains as  
14 confidential and is seeking to continue to maintain confidential consistent with the  
15 provisions set forth below.

16 3. SCOPE

17 The protections conferred by this Order cover not only confidential material (as defined  
18 above), but also (1) any information copied or extracted from confidential material; (2) all copies,  
19 excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
20 conversations, or presentations by parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this Order do not cover the following information:

22 (a) the plaintiff’s personnel file; (b) any information that is in the public domain at the time of  
23 disclosure or becomes part of the public domain after its disclosure as a result of publication not  
24 involving a violation of this Order, including becoming part of the public record through trial or  
25 otherwise; and (c) any information known to the receiving party prior to the disclosure or obtained  
26 by the receiving party after the disclosure from a source who obtained the information lawfully

1 and under no obligation of confidentiality to the designating party. Any use of confidential  
2 material at trial shall be governed by a separate agreement or order.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
5 or produced by another party or by a non-party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
7 categories of persons and under the conditions described in this Order. Confidential material must  
8 be stored and maintained by a receiving party at a location and in a secure manner that ensures that  
9 access is limited to the persons authorized under this Order. When the litigation has been  
10 terminated, a receiving party must comply with the provisions of Section 11 below.

11 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
12 by the court or permitted in writing by the designating party, a receiving party may disclose any  
13 confidential material only to:

14 (a) the receiving party's counsel of record in this action, as well as employees  
15 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

16 (b) the officers, directors, and employees (including in house counsel) of the  
17 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
18 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
19 designated;

20 (c) experts and consultants to whom disclosure is reasonably necessary for this  
21 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (d) the court, court personnel, court reporters and their staff, professional jury  
23 or trial consultants, mock jurors, and professional vendors to whom disclosure is reasonably  
24 necessary for this litigation and who have signed Exhibit A;

25 (e) copy or imaging services retained by counsel to assist in the duplication of  
26 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately  
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is  
4 reasonably necessary and who have signed Exhibit A, unless otherwise agreed by the designating  
5 party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions  
6 that reveal confidential material must be separately bound by the court reporter and may not be  
7 disclosed to anyone except as permitted under this Order;

8 (g) the author or recipient of a document containing the information or a  
9 custodian or other person who otherwise possessed or knew the information.

10 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
11 referencing such material in court filings, the filing party shall confer with the designating party,  
12 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
13 remove the confidential designation, whether the document can be redacted, or whether a motion  
14 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
15 designating party must identify the basis for sealing the specific confidential information at issue,  
16 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
17 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
18 the standards that will be applied when a party seeks permission from the court to file material  
19 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
20 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
21 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
22 the strong presumption of public access to the Court's files.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
25 or non-party that designates information or items for protection under this Order must take care to  
26 limit any such designation to specific material that qualifies under the appropriate standards for

1 confidentiality under both the federal and local rules. To the extent it is practical to do so, the  
2 designating party must designate for protection only those parts of material, documents, items, or  
3 oral or written communications that qualify, so that other portions of the material, documents,  
4 items, or communications for which protection is not warranted are not swept unjustifiably within  
5 the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
7 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
8 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
9 and burdens on other parties) expose the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it designated for  
11 protection do not qualify for protection, the designating party must promptly notify all other parties  
12 that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order,  
14 or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection  
15 under this agreement must be clearly so designated before or when the material is disclosed or  
16 produced.

17 (a) Information in documentary form: (e.g., paper or electronic documents and  
18 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
19 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
20 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
21 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate  
22 markings in the margins). A party or non-party that makes original documents or materials  
23 available for inspection need not designate them for protection until after the inspecting party has  
24 indicated which material it would like copied and produced. During the inspection and before the  
25 designation, all of the material made available for inspection shall be deemed confidential. After  
26 the inspecting party has identified the documents it wants copied and produced, the producing

1 party must determine which documents qualify for protection under this Order. Then, before  
2 producing the specified documents, the producing party must affix the “CONFIDENTIAL” legend  
3 to each page that contains confidential information.

4 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
5 and any participating non-parties must identify on the record, during the deposition or other pretrial  
6 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
7 after reviewing the transcript. Any party or non-party may, within 30 days after receiving the  
8 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
9 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
10 at trial, the issue should be addressed during the pre-trial conference. For testimony in other  
11 pretrial or trial proceedings, parties shall meet and confer and propose reasonable procedures for  
12 use of the confidential material.

13 (c) Other tangible items: the producing party must affix in a prominent place  
14 on the exterior of the container or containers in which the information or item is stored the word  
15 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
16 the producing party, to the extent practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
18 designate qualified information or items does not, standing alone, waive the designating party’s  
19 right to secure protection under this agreement for such material. Upon timely correction of a  
20 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
21 in accordance with the provisions of this Order.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
24 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
26 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
4 regarding confidential designations without court involvement. The challenging party must  
5 explain the basis for its belief that the confidentiality designation was not proper and must give the  
6 designating party an opportunity to review the designated material, to reconsider the  
7 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
8 designation. To avoid ambiguity as to whether a challenge has been made, the challenging party  
9 must identify with reasonable specificity the particular designations challenged and the basis for  
10 the challenge with written notice. The notice shall recite that the challenge to confidentiality is  
11 being made in accordance with this specific paragraph of the Order.

12       A challenging party may file a motion concerning confidential designations only if it has  
13 engaged in this meet and confer process first or establishes that the designating party is unwilling  
14 to participate in the meet and confer process in a timely manner. Any motion regarding  
15 confidential designations or for a protective order must include a certification, in the motion or in  
16 a declaration or affidavit, that the movant has engaged or attempted to engage in a good faith meet  
17 and confer conference with other affected parties in an effort to resolve the dispute without court  
18 action. If the parties engaged in a meet and confer conference, the certification must list the date,  
19 manner, and participants to the conference. A good faith effort to confer requires a face-to-face  
20 meeting or a telephone conference.

21       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
22 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
23 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
24 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
25 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
26 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain

1 the material in question as confidential until the court rules on the challenge and any review process  
2 of the court's ruling has been exhausted, unless the designating party has waived the confidentiality  
3 designation by failing to file a motion to retain confidentiality as described above.

4 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
5 LITIGATION

6 If a party is served with a subpoena or a court order issued in other litigation that compels  
7 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
8 must:

9 (a) promptly notify the designating party in writing and include a copy of the  
10 subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to  
12 issue in the other litigation that some or all of the material covered by the subpoena or order is  
13 subject to this Order. Such notification shall include a copy of this Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
15 the designating party whose confidential material may be affected.

16 If the designating party timely seeks a protective order, the party served with the subpoena  
17 or court order shall not produce any information designated in this action as "CONFIDENTIAL"  
18 before a determination by the court from which the subpoena or order issued, unless the party has  
19 obtained the designating party's written permission. The designating party shall bear the burden  
20 and expense of seeking protection in that court of its confidential material – and nothing in these  
21 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
22 disobey a lawful directive from another court.

23 8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
24 LITIGATION

25 8.1 The terms of this Order are applicable to information produced by a non-party in  
26 this action and designated as "CONFIDENTIAL." Such information produced by non-parties in



1 connection with this litigation is protected by the remedies and relief provided by this Order.  
2 Nothing in these provisions shall be construed as prohibiting a non-party from seeking additional  
3 protections.

4 8.2 In the event that a party is required, by a valid discovery request, to produce a non-  
5 party's confidential material in its possession, and the party is subject to an agreement with the  
6 non-party not to produce the non-party's confidential material, then the Party shall:

7 (a) promptly notify in writing the requesting party and the non-party that some  
8 or all of the information requested is subject to a confidentiality agreement with a non-party;

9 (b) promptly provide the non-party with a copy of the Order in this litigation,  
10 the relevant discovery request(s), and a reasonably specific description of the information  
11 requested; and

12 (c) make the information requested available for inspection by the non-party.

13 8.3 If the non-party fails to seek a protective order from this court within fourteen (14)  
14 days of receiving the notice and accompanying information, the receiving party may produce the  
15 non-party's confidential material responsive to the discovery request. If the non-party timely seeks  
16 a protective order, the receiving party shall not produce any information in its possession or control  
17 that is subject to the confidentiality agreement with the non-party before a determination by the  
18 court. Absent a court order to the contrary, the non-party shall bear the burden and expense of  
19 seeking protection in this court of its confidential material. Nothing in this Paragraph 8 shall be  
20 construed to relieve a party of their obligations under the applicable discovery rules, including  
21 their obligations to respond to discovery request within the time limits set forth in the applicable  
22 federal and local rules.

23 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
25 material to any person or in any circumstance not authorized under this agreement, the receiving  
26 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,

(b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request that such person or persons execute Exhibit A.

10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must, upon request, return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

1           12.2   Right to Assert Other Objections. By stipulating to the entry of this Order, no Party  
2 waives any right it otherwise would have to object to disclosing or producing any information or  
3 item on any ground not addressed in this Order. Similarly, no Party waives any right to object on  
4 any ground to use in evidence of any of the material covered by this Order. Nothing in this Order  
5 will be deemed a limit on or waiver of the attorney-client privilege, work product, or any other  
6 relevant privilege.

7           12.3   Additional Parties to Lawsuit. If other parties are added to this action, no  
8 confidential material previously exchanged, produced, or used herein will be disclosed to such  
9 other parties or their counsel except upon their agreement to be bound by the provisions of this  
10 Order.

11  
12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13  
14 DATED: November 18, 2019

/s/ Henry Brudney

Attorneys for Plaintiff

15  
16 DATED: November 18, 2019

/s/ Allison S. Papadopoulos

Attorneys for Defendant

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9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
11 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
12 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
13 documents, including the attorney-client privilege, attorney work-product protection, or any other  
14 privilege or protection recognized by law.

15 Dated this 21<sup>st</sup> day of November 2019.

16 

17 RICARDO S. MARTINEZ  
18 CHIEF UNITED STATES DISTRICT JUDGE  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on [date] in the  
7 case of *Steve Moshtag v. The Home Depot U.S.A., Inc.*, Case No. 2:19-cv-01205-RSM. I agree  
8 to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16  
17 Date: \_\_\_\_\_

18 City and State where sworn and signed: \_\_\_\_\_

19 Printed name: \_\_\_\_\_

20 Signature: \_\_\_\_\_  
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